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Supreme Court, U.S.
FILED
MAR 31 2000
CLERK

No. 99-1443

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1999

THE CITY OF NEW YORK,

Petitioner,

-v-

MUHAMMAD F.,

Respondent.

On Petition for Writ of Certiorari to the
New York Court of Appeals

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent Muhammad F. asks leave to file the attached Brief in Opposition to a Petition for Writ of Certiorari and to proceed in forma pauperis. Respondent has been granted leave so to proceed in the state courts of New York. Respondent's affidavit in support of this motion is attached hereto.

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Raymond E. Rogers

RAYMOND E. ROGERS*
Of Counsel

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March 31, 2000

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19 pp

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1999

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THE CITY OF NEW YORK,	:	No. 99-1443
Petitioner	:	
-v-	:	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
MUHAMMAD F.,	:	
Respondent.	:	
	:	

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INSTRUCTIONS

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

AFFIDAVIT IN SUPPORT OF MOTION

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Muhammad Fuller

Date: 3/28/00

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
	You	You
Employment	$ N/A	$ N/A
Self-employment	$ N/A	$
Income from real property (such as rental income)	$ N/A	$
Interest and dividends	$ N/A	$
Gifts	$ N/A	$
Alimony	$ N/A	$
Child support	$ N/A	$
Retirement (such as social security, pensions, annuities, insurance)	$	$
Disability (such as social security, insurance payments)	$ N/A	$
Unemployment payments	$ N/A	$
Public-assistance (such as welfare)	$	$
Other (specify):	$	$
Total monthly income:	$ N/A	$

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

4. How much cash do you and your spouse have? $ N/A

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A		$	$
N/A		$	$
N/A		$	$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
N/A		Make & year:
		Model:
		Registration #:

Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: N/A		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ N/A	$ N/A
Are real-estate taxes included? [ ] Yes [ ] No		
Is property insurance included? [ ] Yes [ ] No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	$ N/A	$ N/A
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$
Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in Mortgage payments)	$	$
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$ N/A	$ N/A

Other: _____	$ N/A	$ N/A
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	$	$
Installment payments	$	$
Motor Vehicle	$	$
Credit card (name): _____	$	$
Department store (name): _____	$	$
Other: _____	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify): _____	$	$
Total monthly expenses:	$ N/A	$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
[ ] Yes [ ] No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? Yes No
If yes, how much? $_____
If yes, state the attorney's name, address, and telephone number:
N/A

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[ ] Yes [ ] No
If yes, how much? $ N/A
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.
259-16 148th Ave.
Rosedale, Queens NY
Your daytime phone number: 718-712-3716
Your age: 19 Your years of schooling: _____
Your social-security number: _____

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THE CITY OF NEW YORK,

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(212) 577-3544

RAYMOND E. ROGERS*
Of Counsel

*Counsel of Record

March 31, 2000

QUESTION PRESENTED

Whether the police stop of the taxicab in which respondent was riding violated the Fourth and Fourteenth Amendments to the United States Constitution where the nighttime stop was effected by two plainclothes police officers in an unmarked car, without any suspicion of wrongdoing, pursuant to an unwritten policy of the New York City Police Department encouraging random taxi stops by roving patrols.

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IN THE SUPREME COURT
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OCTOBER TERM 1999

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THE CITY OF NEW YORK, : No. 99-1443

Petitioner, :

-v- :

MUHAMMAD F., :

Respondent. :

:

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STATEMENT OF THE CASE

On July 9, 1996, the Corporation Counsel of the City of New York (the petitioner in this Court) filed a juvenile delinquency petition in New York County Family Court charging the then fifteen-year-old respondent, Muhammad F., with the commission of six delinquent acts regarding the possession of crack cocaine discovered as the result of a July 7, 1996, police stop of a taxicab in which the respondent was riding. On July 17, 1996, the respondent filed a motion to suppress all evidence the police had obtained as a result of the stop of the cab on the ground the search and seizure violated the state and federal constitutions.

At the suppression hearing held in New York County Family Court in August 1996, New York City Police Officer Jeffrey Miller, a member of the department for four and a half years, testified that he joined the Street Crime Unit in January 1996 and his training for that assignment consisted of "[t]wo or three days when

I first came to the unit . . . where they took us out and showed us what to look for, how to look for certain things . . . for wrongdoing" (A79-81).[1] One of his duties in the Street Crime Unit was to distribute a pamphlet of safety tips to taxi drivers "[t]o try and inform them [of] ways to cut down on taxi robberies and homicides" (A83). A copy of that pamphlet was received in evidence as exhibit one (A83).[2] Officer Miller testified that, with regard to the stopping of taxi cabs by the Street Crime Unit, the police department required that it "be done in a set basis and not just arbitrarily" (A84).

On the night of July 7, 1996, Officer Miller and his partner, Officer Tim Morley, were in plainclothes driving an unmarked car; they were "assigned to Manhattan North, and [they] were out there looking for street crimes and also taxi robberies" (A81). The officers, who were working a 6:00 p.m. to 2:00 a.m. shift, were "conducting a taxi safety check" in which they occasionally stopped an occupied cab (A81, 84-85). At 11:00 p.m. the officers stopped a "gypsy" cab in front of 256 West 1[illegible],th Street (A85). The officers did so by driving behind the cab and placing the police light on

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[1]Parenthetical citations preceded by the letter "A" refer to the pages of the appendix prepared by the petitioner in the New York Court of Appeals.

[2]The pamphlet contains a number of safety tips for cab drivers such as installing a partition and using a drop safe. The pamphlet also states: "The New York City Police Department has established safety routes and safety checkpoints. Along these routes and points the police will stop taxis and briefly interview the driver to determine if there are any problems." The pamphlet then lists nearly every major thoroughfare in the city, including 145th Street in Manhattan.

the dashboard (A86). In response, the cab driver pulled over and stopped on the right side of the road (A86). The driver had not been operating the vehicle in an unusual manner prior to the stop (A86, 109). The police stopped that particular vehicle because they decided to pull over the third occupied cab they saw at that location and this was the third occupied cab they noticed (A81-86).

Officer Miller, who had been driving the police car, and his partner exited the car and approached the cab on foot (A86). With their guns in their holsters, the officers walked to the cab carrying flashlights and noticed that the driver was alone in the front seat and three passengers were in the back seat (A87). Officer Miller identified the respondent as the passenger sitting in the right rear of the cab (A87-88). As he approached the cab, Officer Miller noticed the respondent glance over his shoulder several times while kicking something under the seat of the cab (A88-93). Officer Miller told the cab driver: "We are the Taxi Task Force doing safety checks this evening. Would you like us to inspect the rear of [the] car?" (A89). Asked the driver's response, the officer testified: "I believe he nodded. I don't recall his exact words" (A89). Officer Miller described a safety check as a procedure in which the officers "ask the passengers to step out briefly while we look through, under the seats or in between the slots where the back seat meets the backrest" (A89). Officer Miller asked the passengers to exit the cab, and he described their demeanor as "fine, nothing unusual" (A90).

With the driver remaining in the cab, the three passengers walked to the back of the cab while Officer Miller searched the passenger compartment of the cab (A92). On the floor, under the rear of the front passenger seat, the officer saw a rolled-up, lunch-size paper bag (A92, 116). The bag, which was partly sticking out from under the seat, was on the floor between where the middle passenger and the right passenger had been sitting (A92, 116). The brown paper bag was opaque and closed at the top, so the officer could not see its contents (A119).

Officer Miller picked up the bag, felt it, and noticed that the contents of the bag "felt like it was a box containing [what] possibly could have been bullets at that point" (A92). The officer then looked in the bag in order to "see what was in there" (A93). The officer observed inside the bag "crack vials, tops for crack vials," and a plastic bag that appeared to contain crack cocaine (A93). The vials "were packaged straight up and down in a small cardboard box" (A93). The officer did not find any bullets or cartridges in the bag (A93-94).

Officer Miller then began frisking the three passengers (A93). One of the other passengers "asked me what was going on, and . . . when I informed them that I recovered the crack from the back seat, which leaves everyone that was in the back seat responsible, he said it was not his and another passenger said it wasn't his" (A95-96). Officer Miller then told the passengers, "unless anyone owns up, it belongs to everyone in the back seat" (A97). In response, the respondent said the bag was his (A96-97).

Officer Miller testified that he did not know how many cabs he stopped on the night in question (A104). Asked how many cabs he stopped during a typical tour of duty, the officer responded: "It depends on where I am, what hours I am working, anywhere from five to some nights, probably as high as 20" (A104). Officer Miller testified that the police department had not supplied him with any written directives regarding the stopping of taxi cabs, and the officer himself did not keep a written record of the taxi stops he made (A107).

New York City Police Captain Richard Savage, a thirty-seven-year veteran of the force and the commanding officer of the Street Crime Unit, testified that the unit's purpose is to "suppress violent street crime" such as "[s]treet mugging, street robberies, commercial robberies, assault weapons possession" (A68-69). Captain Savage, who had been in the unit since 1973 and had been its commander for eighteen months, told the court that the unit, beginning in 1992, focused on taxi robberies as well as street crime (A69-70). Captain Savage testified that "crimes against cab drivers [occur in] generally the high crime hours, between 6:00 p.m. to 2:00 a.m." (A70).[3] The captain testified that officers assigned to the Street Crime Unit receive "training in the recovery of guns from the street, identifying people that have guns, vehicles. The second part of the training is a practical thing where they talk to and stop pedestrians and vehicles and look for

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[3]Asked on cross-examination what percentage of taxicab crimes took place during that period, the captain replied that he did not know (A74).

contraband in these vehicles" (A73). Captain Savage testified that he did not know whether Officer Miller had received any training regarding the stopping of taxis (A73). The captain testified that the officers in his unit received only verbal instructions with regard to stopping taxis; the department did not provide any written instructions or procedures (A75). Nor did the department require the officers to document the taxi stops they made (A76). Captain Savage testified that he left it to the discretion of the officers on the scene as to how they selected which cab to stop--whether to stop, for example, the second, third, or fourth cab they saw at a particular location (A78). The officers were not given a quota as to how many taxi stops to make each night (A78).

On August 23, 1996, the Family Court denied the motion to suppress (A165). At the subsequent fact-finding hearing, the prosecution introduced the evidence obtained as a result of the stop of the cab, and the Family Court on September 4, 1996, found that the respondent committed the delinquent acts of criminal possession of a controlled substance in the third and fourth degrees (A24-25). On September 20, 1996, the Family Court adjudicated the respondent a juvenile delinquent and placed him with the New York State Division for Youth for a period of eighteen months (A27-28).

Respondent appealed to the Appellate Division, First Department, arguing that the police stop of the cab had been illegal and that all the evidence obtained as a result of the stop should be suppressed. In a decision issued November 17, 1998, the

First Department noted that "suspicionless fixed checkpoint stops" had been upheld by higher courts but "the stopping of vehicles by roving patrols on the basis of less than reasonable suspicion has met with disapproval." In re Muhammad F., 255 A.D.2d 168, 169-70, 683 N.Y.S.2d 477, 479 (1st Dept. 1998). The stop in the present case was thus illegal because "[t]he cab in which [respondent] was riding was stopped by police on roving patrol in an unmarked car, not at a marked checkpoint at a fixed location." Id. at 171, 683 N.Y.S.2d at 480. As a result, "[t]he procedure employed in the instant matter leaves far too much to the unfettered discretion of the individual officer in selecting which vehicle to stop for the purpose of detaining and questioning its occupants." Id. at 170, 683 N.Y.S.2d at 479-80. In addition to the officer's failure to document the stops they did make, the court noted the absence of standards or directives adopted by higher government officials and the absence of any written guidelines to be followed by the officers in the field. Id. at 170-71, 683 N.Y.S.2d at 480. The court also noted that "the officers' practice of stopping only occupied taxi cabs indicates that their interest was to observe the passengers, not to educate the drivers about safety issues." Id. at 171, 683 N.Y.S.2d at 480.

In dissent, Justice Sullivan conceded that "there was no reasonable suspicion to justify the stop involved." Id. Despite the case law to the contrary, Justice Sullivan would have held that the police may make suspicionless roving-patrol stops. Id. at 172-73, 683 N.Y.S.2d at 481. According to Justice Sullivan, roving-

patrol stops of this sort should be allowed because they are "less intrusive" than stops made at roadblocks. Id. at 172, 683 N.Y.S.2d at 481.

On November 30, 1999, the New York Court of Appeals, with one judge dissenting, affirmed the ruling of the Appellate Division. In re Muhammad F., 94 N.Y.2d 136, 700 N.Y.S.2d 77, 722 N.E.2d 45 (1999). The court noted that the stop in this case and a consolidated case had been made by officers "in plain clothes, using unmarked police cars, on a roving patrol" and "[i]n the absence of probable cause, suspicious behavior or any illegal activity on the part of the driver or passengers." Id. at 140, 700 N.Y.S.2d at 78, 722 N.E.2d at 46. The court further noted that no written guidelines existed for the program, and how the officers selected the cabs to be stopped "was not based on a fixed format, but varied, depending on circumstances seen and acted upon solely by the officers in the field." Id. at 140-41, 700 N.Y.S.2d at 78, 722 N.E.2d at 46. The court also noted that the officers kept no written records of the taxi stops made, and the number of cabs the officers stopped on a given night was totally within their discretion. Id. at 141, 700 N.Y.S.2d at 78, 722 N.E.2d at 46.

Relying on this Court's holdings in Brown v. Texas, 443 U.S. 47, 48-52 (1979) (the police may not make a suspicionless stop of a pedestrian to ask him for identification), Delaware v. Prouse, 440 U.S. 648, 657-61 (1979) (the police may not make a suspicionless roving-patrol stop of a motor vehicle to check the driver's license and the car's registration), and United States v.

Brignoni-Ponce, 422 U.S. 873, 883-84 (1975) (the Border Patrol may not make a suspicionless roving-patrol stop of a motor vehicle to check the occupants' immigration status), the New York Court of Appeals ruled that while the goal of protecting cab drivers was important, the prosecution had failed to show that this type of roving patrol stop--as opposed to a fixed checkpoint stop with marked police cars and uniformed officers--was an effective means of achieving that goal. Muhammad F., 94 N.Y.2d at 147, 700 N.Y.S.2d at 82-83, 722 N.E.2d at 50-51. The court also found that the police stop was "excessively and . . . unjustifiably intrusive, both objectively and subjectively." Id. at 147, 700 N.Y.S.2d at 83, 722 N.E.2d at 51.[4]

ARGUMENT

This Court's rules provide that it will consider granting review on certiorari where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." Sup. Ct. R. 10(b). In its petition, however, the City of New York fails to cite even one decision of another state or federal court that conflicts with the holding of the New York Court of Appeals in this case, and the respondent is

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[4]Judge Smith dissented in the Court of Appeals and would have upheld the police stop of the car. Id. at 149-53, 700 N.Y.S.2d at 84-87, 722 N.E.2d at 52-55 (Smith, J., dissenting). Judge Smith's dissent was based in part on his view that respondent "arguably" may have lacked standing. Id. at 153, 700 N.Y.S.2d at 87, 722 N.E.2d at 55. The City of New York had not previously challenged respondent's standing to challenge the police stop of the car, and the petitioner has not raised the standing issue in this Court.

also unaware of any such conflicting decisions. Thus certiorari is not warranted by any split of opinion in the lower courts.

This Court's rules also provide that certiorari review may be appropriate where "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). First, this Court has settled in Delaware v. Prouse, 440 U.S. 648, 657-61 (1979), and United States v. Brignoni-Ponce, 422 U.S. 873, 883-84 (1975), the question of whether under the Fourth Amendment the police, without any suspicion, may make a roving-patrol stop of a motor vehicle. Those cases both held that such stops violated the Constitution. Second, while the City of New York claims that the holding of the New York Court of Appeals conflicts with this Court's decisions in Prouse and Brignoni-Ponce (Petition for Writ of Certiorari at 11), even a cursory review of those two cases demonstrates just the opposite: the decision of the New York Court of Appeals not only followed the holdings in Prouse and Brignoni-Ponce but expressly relied on those cases in doing so. Muhammad F., 94 N.Y.2d at 142-48, 700 N.Y.S.2d at 80-84. The New York Court of Appeals repeatedly cited and quoted those decisions in reaching the holding in this case. The New York Court of Appeals merely applied well settled constitutional principles to the facts of this case.

The claim by the City of New York that a random, suspicionless roving-patrol is required to protect cab drivers from

crime is not supported by anything in the record or the law.[5] As the New York Court of Appeals ruled, the City made no showing that this type of police action provided any more protection for drivers than would checkpoints established in a constitutional manner. The stop at issue here was even more intrusive than those struck down in Prouse and Brignoni-Ponce given that those stops were by uniformed officers in marked patrol cars whereas this stop was effected by plainclothes officers in an unmarked car. This Court has consistently held that random and sporadic suspicionless police stops of motor vehicles violate the Fourth Amendment. As this Court stated in Brown, 443 U.S. at 52, where the police stopped appellant merely to ask him for identification, "[i]n the absence of any basis for suspecting appellant of misconduct, the balance between the public interest and appellant's right to personal security and privacy tilts in favor of freedom from police interference." The New York Court of Appeals correctly applied this Court's precedents, and thus this case does not warrant certiorari review.

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[5]The facts cited by the City of New York at pages 8-9 of its petition, regarding the number of crimes committed against cab drivers and the police response thereto, are not included in the record of this case and come from newspaper stories that were not made part of the record.

CONCLUSION

For the reasons stated above, respondent respectfully requests this Court to deny the petition for writ of certiorari.

Respectfully submitted,

MONICA DRINANE
Attorney for Respondent

RAYMOND E. ROGERS
Of Counsel

March 31, 2000